



FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/166929

PRELIMINARY RECITALS

Pursuant to a petition filed June 26, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on July 16, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the Department of Health Services (DHS) correctly modified the Petitioner's request for personal care worker (PCW) services.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: OIG by Letter

Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. On March 9, 2015, [REDACTED] ([REDACTED]) completed a Personal Care Screening Tool (PCST) that determined the Petitioner's needs to be as follows:

Bathing - Level E
 Dressing Upper Body - Level D
 Dressing Lower Body - Level E
 Assistance with placement of knee brace
 Grooming - Level F
 Eating - Level C
 Mobility - Level D
 Toileting - Level D
 Transferring - Level D
 Medication Reminders twice per week; Level B

(Exhibit 4, pgs. 8-14)

3. The Petitioner lives alone and does not attend regularly scheduled activities outside the home. (Exhibit 4, pgs. 9-10; Testimony of Petitioner)
4. The Petitioner's primary diagnoses are arthritis / osteoarthritis and fibromyalgia; she has had a knee replacement. (Exhibit 4, pg. 28; Testimony of Petitioner).
5. The Petitioner is wheelchair bound. (Id.)
6. On April 23, 2015, [REDACTED] submitted, on behalf of the Petitioner, a prior authorization request for 36 hours per week of Personal Care Worker (PCW) service hours with 7 hours a week travel time for the PCW, for 53 weeks, at a cost of \$54,656,25. (Exhibit 4, pgs. 5 and 6)
7. The physician orders in the Plan of Care ordered 32 hours per week of personal care services, but did not order assistance with placement of a brace. (Exhibit 4, pg. 8)
8. On June 5, 2015, the Department of Health Services (DHS) sent the Petitioner and [REDACTED] notice that the request for services was modified to 28.75 hours per week with 7 hours per week travel time for the PCW. (Exhibit 4, pgs. 29-34)
9. In its letter dated July 6, 2015, DHS increased the approved number of PCW hours to 30.25 hours per week. (Exhibit 3)

DISCUSSION

Personal Care Services are a covered service by Medicaid. They are defined as, "medically oriented activities related to assisting a recipient with activities of daily living necessary to maintain the recipient in his or her place of residence in the community. These services shall be provided upon written orders of a physician by a provider certified under s. DHS 105.17 and by a personal care worker employed by the provider or under contract to the provider who is supervised by a registered nurse according to a written plan of care." *Wis. Admin. Code DHS §107.112(1)(a)*.

Prior authorization is required for personal care services in excess of 250 hours per calendar year and for home health services covered under Wis. Admin. Code DHS §107.11(2), that are needed to treat a recipient's medical condition or to maintain a recipient's health. *Wis. Admin. Code DHS §107.112(b)*

The Department of Health Services requires prior authorization of certain services to:

1. Safeguard against unnecessary or inappropriate care and services;
2. Safeguard against excess payments;
3. Assess the quality and timeliness of services;
4. Determine if less expensive alternative care, services or supplies are usable;
5. Promote the most effective and appropriate use of available services and facilities; and
6. Curtail misutilization practices of providers and recipients.

Wis. Admin. Code § DHS107.02(3)(b)

“In determining whether to approve or disapprove a request for prior authorization, the department shall consider:

1. The medical necessity of the service;
2. The appropriateness of the service;
3. The cost of the service;
4. The frequency of furnishing the service;
5. The quality and timeliness of the service;
6. The extent to which less expensive alternative services are available;
7. The effective and appropriate use of available services;
8. The misutilization practices of providers and recipients;
9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including Medicare, or private insurance guidelines;
10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
12. The professional acceptability of unproven or experimental care, as determined by consultants to the department.”

Wis. Admin. Code §DHS107.02(3)(e)

“Medically necessary” means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
 2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
 3. Is appropriate with regard to generally accepted standards of medical practice;
 4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
 5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
 6. Is not duplicative with respect to other services being provided to the recipient;
 7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
 8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
 9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Adm. Code. §DHS 101.03(96m)

Petitioner has the burden to prove, by a preponderance of the credible evidence, that the requested services meet the approval criteria. *Gonwa v. Department of Health and Family Services*, 2003 WI App 152, 265 Wis.2d 913, 668 N.W.2d 122 (Ct.App. 2003)

██████, on behalf of Petitioner, requested 36 hours per week of active PCW service hours and seven hours per week of travel time for the PCW. According to the letter from the Department of Health Services, Office of the Inspector General, DHS approved the 7 hours per week of travel time for the PCW, but modified the request for active PCW service hours, reducing it from 36 hours per week to 30.25 hours per week.

It should be noted that 36 hours of PCW service cannot be approved, because Wis. Admin. Code §DHS 107.112(1)(a) states that personal care services, “shall be provided upon written orders of a physician...according to a written plan of care”. In addition, Wis. Admin. Code §DHS 107.112(4)(c) specifically lists “Personal care services not documented in the plan of care” as a non-covered service.

In the case at hand, the physician order in the plan of care only ordered 32 hours per week of PCW services. As such, that would be the maximum that could be approved, if the record supports such time.

In determining how many hours of personal care services an individual is allowed, a service provider, in this case, ██████, completes a personal care screening tool (PCST). A link to the blank form can be found in the on-line provider handbook located, under topic number 3165 on the Forward Health website:

<https://www.forwardhealth.wi.gov/WIPortal>

In general, seven activities of daily living (ADLs) are reviewed: 1) Bathing, 2) Dressing, 3) Grooming, 4) Eating, 5) Mobility, 6) Toileting, and 7) Transfers. In addition, Medically Oriented Tasks (MOTs), if any, are examined.

The responses are then entered into a web-based PCST, which cross references the information with the Personal Care Activity Time Allocation Table. The Personal Care Activity Time Allocation Table is a guideline showing the maximum allowable time for each activity. *On-Line Provider Handbook Topic #3165*. A copy of the table was included as attachment 1 of the OIG letter, Exhibit 3.

The letter from the Office of the Inspector General indicated that DHS allowed the following times for the following activities:

1. Bathing: 30 minutes per day x 7 days	210 minutes per week
2. Dressing Upper Body: 10 minutes per day x 7 days	70 minutes per week
3. Dressing Lower Body: 10 minutes per day x 7 days	70 minutes per week
4. Grooming: 15 minutes x twice a day x 7 days	210 minutes per week
5. Eating: zero minutes	zero minutes
6. Mobility: 30 minutes per day x 7 days	210 minutes per week
7. Toileting: 40 minutes per day x 7 days	280 minutes per week
8. Transfers: 45 minutes per day x 7 days	315 minutes per week
9. MOTs: zero minutes	zero minutes

Total: 1365 minutes week

Bathing

For bathing, DHS allowed the maximum amount of time permitted by the Personal Care Activity Time Allocation Table: 30 minutes per day x 7 days a week = 210 minutes per week. The Petitioner testified that this was sufficient time for the PCW to help her with bathing.

Dressing

According to the PCST instructions, one episode of dressing is included in the 30 minutes allowed for bathing. The PCST instructions can be viewed on-line at:

<http://www.dhs.wisconsin.gov/forms/F1/F11133a.pdf>

DHS allowed the maximum amount of time permitted for the second episode of dressing both upper and lower body: 20 minutes per day x 7 days a week = 140 minutes per week. The Petitioner testified that this was a reasonable amount of time for her PCW to assist her with dressing.

The PCST indicated that the Petitioner needs assistance with placing a knee brace and the Petitioner confirmed that she wears one at night.

Approval of a prior authorization request is limited by what is ordered by a physician in the plan of care. This is based upon Wis. Admin. Code §DHS 107.112(1)(a) which states that personal care services, “shall be provided upon written orders of a physician...according to a written plan of care”. In addition, Wis. Admin. Code §DHS 107.112(4)(c) specifically lists “Personal care services not documented in the plan of care” as a non-covered service.

In the case at hand, the physician order in the plan of care does not contain an order for assistance with placing a brace. As such, time cannot be approved for this task. [REDACTED] will have to submit an amended prior authorization request, with an updated plan of care to receive coverage for time spent helping the Petitioner with her knee brace.

Grooming

DHS allowed the maximum amount of time permitted for grooming, 30 minutes per day, 210 minutes per week. The Petitioner indicated that this was sufficient time for her PCW to help her with basic grooming tasks, such as brushing her teeth, washing her face, or combing her hair.

The Petitioner indicated that it sometimes takes more time to do her hair, because she has a lot of braids. The PCST instructions defines grooming as, “the ability to tend to personal hygiene needs. Grooming activities include washing face, hands, and feet; combing/brushing hair, shaving, nail care, applying deodorant and oral or denture care.” However, time for styling hair, even in a simple pony-tail, is not included in the definition of grooming that is found in the PCST instructions. As such additional time for styling Petitioner’s hair may not be granted.

Eating

The Petitioner does not dispute the fact that she is able to feed herself. The Petitioner indicated that she does need assistance with meal preparation, but time for light meal preparation is included in the time allowed for incidental tasks, which will be discussed further, below.

Mobility

DHS allowed the maximum time for mobility, 30 minutes per day, 210 minutes per week. The Petitioner testified that this was sufficient time for the PCW to help her move about her home safely.

Toileting

DHS allowed for 40 minutes per day, 280 minutes per week for assistance with toileting. The Petitioner testified that this was a reasonable amount of time for this task.

Transfers

DHS allowed the maximum amount of time for this task, 45 minutes per day, 315 minutes per week. The Petitioner testified that this was a reasonable amount of time for the PCW to assist her with getting into or out of bed.

Medically Oriented Tasks

Under Medically Oriented Tasks (MOTs), the PCST indicated that the Petitioner needs assistance with medication reminders at level B. According to the Personal Care Activity Time Allocation Table, Medicaid

does not cover PCW time for individuals who need assistance with MOTs at level B. Accordingly, DHS correctly denied time for this task.

Total Time Needed for ADLs and MOTs

Based upon the foregoing, the actual time needed to completed Petitioner's ADLs and MOTs is as follows:

1. Bathing: 30 minutes per day x 7 days	210 minutes per week
2. Dressing Upper Body: 10 minutes per day x 7 days	70 minutes per week
3. Dressing Lower Body: 10 minutes per day x 7 days	70 minutes per week
4. Grooming: 15 minutes x twice a day x 7 days	210 minutes per week
5. Eating: zero minutes	zero minutes
6. Mobility: 30 minutes per day x 7 days	210 minutes per week
7. Toileting: 40 minutes per day x 7 days	280 minutes per week
8. Transfers: 45 minutes per day x 7 days	315 minutes per week
9. MOTs: zero minutes	zero minutes
<hr/>	
Total:	1365 minutes week

Incidental Tasks

Per the on-line Provider Handbook, topic 3167, for individuals who live alone, time equal to 1/3 of the time it actually takes to complete Activities of Daily Living (ADLs) may be allocated for incidental cares such as changing and laundering linens, light cleaning in areas used during personal care activities, eye glass care and hearing aids, meal preparation, food purchasing and meal service.

One third of 1365 minutes is 455 minutes.

Thus, the total time allowed for PCW services works out to be:

1365 minutes per week for ALDs
+455 minutes per week for incidental activities

1820 minutes per week

1820 minutes ÷ 15 minutes per unit = 121.3333 units per week rounded to 121 units per week
121 units per week = 30.25 hours per week of personal care services.

DHS ultimately approved 30.25 hours of personal care service hours per week. As such, its modification was correct.

Petitioner should be aware that if [REDACTED] can show a medical need for more time, it can always submit a request [an amendment/a new prior authorization] for additional time, with evidence to show the need for the additional time.

I note to the Petitioner that her provider, [REDACTED], will not receive a copy of this Decision. It might be in Petitioner's best interests to share this decision with [REDACTED].

CONCLUSIONS OF LAW

DHS correctly modified the Petitioner's request for PCW services by approving 30.25 hours per week of PCW services.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

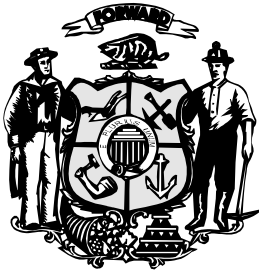
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 23rd day of July, 2015.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on July 23, 2015.

Division of Health Care Access and Accountability